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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,867	10/23/2000	Brooke Allyson Armstrong	1914.0020000/DKSC/DRB	8657
26111	7590	09/23/2004	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005				VU, VIET DUY
ART UNIT		PAPER NUMBER		

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/693,867	ARMSTRONG ET AL.	
	Examiner	Art Unit	
	Viet Vu	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 July 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3,4 and 6-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3,4 and 6-34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Non-Art Rejections:

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 31-34 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for using a sever process for determining user's ability, does not reasonably provide enablement for determining user's ability without requiring executable code that persists on the user's storage. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. It is not clear how the user's device would operate when there is not an executable program persisting on the user's device. It is commonly known that at least one executable program must be installed on the user's device for operating the device.

Art Rejections:

3. The text of 35 U.S.C. § 103(a) cited in the previous office action is hereby incorporated by reference.

4. Claims 1, 3-4 and 6-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Landsman et al, U.S. pat. No. 6,314,451, in view of Agraharam et al, U.S. pat. No. 6,035,339.

Landsman discloses a system and method for providing rich media contents to a user over a network comprising:

- a) determining media files and/or programs required to playback the media content delivered to user without a user request, i.e., advertisements (see col 27, lines 55-60),
- b) transparently downloading into a local cache a version of the media content appropriate for the user to playback the content locally including a rich media file and an appropriate media player (col 27, lines 9-35),
- c) displaying/playing the media content, i.e. ads, to the user in a designated display area after the media content has been completely downloaded (see col 27, line 66 - col 28, line 2).

Landsman does not explicitly teach the step of determining client ability to playback the rich media content. The use of such determination to select suitable content formats for the

client is well known in the art as disclosed by Agraharam. Particularly, Agraharam teaches utilizing a server-side process for determining client capability, e.g. by examining client profile (see Agraharam's col 3, lines 25-36). The identified capability is then used to select appropriate rich media content formats/versions to be delivered to the client (see Agraharam's col 4, lines 30-43).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Landsman with Agraharam's teachings because it would have enabled the system to provide appropriate rich media content formats to the client.

Per claim 10, Landsman teaches modifying and/or selecting version of media file that is suitable for user's computer (see col 27, lines 9-20).

Per claim 13, it is noted that a typical media player comprises controls for manipulating the content.

Per claims 18-19 and 30, it is also noted that many promotional advertisements include downloadable files that are encouraged for freely distributing.

Per claims 22-26, it would have been further obvious to one skilled in the art to practice Landsman's invention with any known types of client devices and/or communication networks.

Response to Amendment:

5. Applicant's arguments filed on 7/19/04 with respect to claims 1, 3-4 and 6-34 have been fully considered but they are moot in view of new grounds of rejection set forth above.

Per claim 1, applicant asserts that the art of record fails to teach or suggest the claimed invention because the art of record does not teach determining client ability by a server process.

The examiner is unable to find the alleged distinction in the current claims. The newly applied art is cited to show the claimed step of determining client ability without using codes that are downloaded and persistently stored in client storage.

It is also suggested that the applicant to use positive limitations to better define the invention over prior art of record instead of the currently presented negative limitations, e.g., "...without requiring executable code...".

Conclusion:

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viet Vu whose telephone number is (703) 305-9597. The examiner can normally be reached on Monday through Friday from 7:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee, can be reached on (703) 305-8498.

Art Unit: 2154

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



VIET D. VU
PRIMARY EXAMINER

Art Unit 2154

9/20/04